

**ORDER BELOW EXH. 6**  
**M.A.C. PETITION NO. 398/2019**

- (1) This application is preferred by the applicants who are the heirs o the deceased under Section 140 of Motor Vehicles Act for interim compensation under the head of "**NO FAULT LIABILITY**".
- (2) Heard Ld. Advocate for the applicants. In this case notice served to the all opponents and opponent No. 1 and 2 are filed their written objection vide Exh. 15 and opponent no. 3 filed its written statement at Exh. 18, Opponent no. 1 to 3 denied all averments of applicants' application and contended that accident not happened due to opponent no. 1 hence, they pray to reject this application. However, in this written statement of opponents suggest that involvement of the offending vehicle is there on record.
- (3) It is stated in the claim petition filed by the applicant that, deceased died on 21/01/2015 due to vehicular accident caused by Truck bearing Registration No. GJ-19-U-4061. On the other hand, no opponents present to oppose this application. However, the involvement of the vehicle in the accident was on the record.
- (4) In the case of **Eshwasrappa @ Maheshwarappa Vs. Gurushanthappa, reported in 2010(3) GLR (NOC-43) SC.** Hon'ble Supreme Court held that while deciding application under Section 140,

only factor to be considered is, whether the accident has arisen out of the use of motor vehicle resulting into death or permanent disability and no other question regarding fault liability etc. could be gone into for deciding application u/s. 140 of M.V. Act. Therefore, in view of the above decision, I hold that Insurance Company cannot raise defence regarding the breach of conditions. Such defence can be dealt with at the time of deciding Main Claim petition under Section 166 of the Act after recording evidence. Moreover, in the judgment of **Hon'ble High Court of Gujarat in case of New India Assurance Co. Ltd. Vs. Kalabhai M. Koli and Ors. In F.A. No. 2103 of 2015**, it is laid down that at the stage of proceedings under Section 140 of the M.V. Act, the Claims Tribunal has to verify only following three aspects.

- (a) The accident has arisen out of use of motor vehicle.
  - (b) The said accident resulted in permanent disablement or death of a person by whom or his legal representatives the claim petition is filed.
  - (c) The claim is made against the owner and insurer of the motor vehicle.
- (5) In the matter at hand, the applicant has produced the relevant documents viz. copies of complaint, Panchanama of scene of offence, Inquest Panchnama and P.M. report and copy of RC Book and copy of Insurance Policy and charge-sheet against the opponent no. 1. From the documents produced by the applicant, it is established that

offending vehicle was involved in the accident and the Opponent no. 1 was the driver of the offending vehicle and opponent no. 2 was the owner and opponent no. 3 is the insurer of the offending vehicle, hence all the requirements and conditions mentioned in Section 140 of M.V. Act have been satisfied. Moreover, it is not necessary for deciding the present application to consider as to who was negligent and who was liable and to what extent for this accident. As the applicant has claimed compensation on the basis of no fault liability, in this event without ascertaining the negligence of driver, it is desirable to decide this application without looking into the issue of negligence.

- (6) Further, in the matter titled as **“Dhirubhai Karshanbhai Chau vs. Karmanbhai Harjibhai Pipaliya & Ors.”**, **First Appeal No. 1749 of 2012 decided on 03.03.2014**, Hon'ble Gujarat High Court held as under:

“Having regard to object behind the enactment of section 140 of the MV Act, viz. to provide immediate succour to the victim or to the heirs of the deceased, as well as considering the nominal amount involved, it was not permissible for the tribunal to pass any order of depositing part of the awarded amount as the same would defeat the very object of section 140 of the Act. Under the circumstances, as and when such amount is deposited with the Tribunal, the same shall be disbursed to the appellant.”

Hence, I pass the following final order:-

**ORDER**

- The application is hereby allowed.
- The applicants do recover **Rs. 50,000/- (Rs. Fifty Thousand only)** from the **Opponents jointly** with running interest at the rate of 9% per annum from the date of main claim petition till realization.
- All the opponents are hereby directed to deposit in the office of this Tribunal the amount of award, as above, within one month from the date of this order.
- Above referred amount is to be paid to applicant by account payee cheque after proper verification.

Pronounced in open court today on this 10<sup>th</sup> **day of December 2019.**

Date: 10.12.2019

Place:- Surat

**[Dipen Dilipkumar Buddhdev]**  
**M.A.C (Auxi) Tribunal, Surat**  
**UID Code GJ00612**